

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WILLABROOK SANITATION, INC.)	
)	
_____)	CASE NO. 97-090
)	
ALLEGED VIOLATION OF KRS 278.020)	
AND 807 KAR 5:001, SECTION 9)	

O R D E R

Willabrook Sanitation, Inc. ("Willabrook") is a privately owned corporation which owns and controls facilities that are used for or in connection with the treatment of sewage for the public for compensation in Bullitt County, Kentucky. As such, it is a utility subject to the jurisdiction of the Public Service Commission. KRS 278.010(3); KRS 278.040.

On February 16, 1996, Willabrook was inspected by Commission Staff for compliance with Commission statutes and regulations. It was found that Willabrook was in the process of constructing a new plant alongside the existing one, with construction expected to be completed in the Spring of 1996. Willabrook has since filed an application with the Commission seeking a rate increase pursuant to the alternative rate adjustment procedure for small utilities as provided for under 807 KAR 5:076.¹ During the course of reviewing that application, Commission Staff noted that Willabrook had constructed a new sewage treatment plant.

¹ Case No. 96-568, The Application of Willabrook Sanitation, Inc. For an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities.

A review of Commission records indicates that Willabrook failed to seek approval from the Commission prior to constructing its new facility. KRS 278.020(1) states, in relevant part:

No person, partnership, public or private corporation, or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until such person has obtained from the Public Service Commission a certificate that public convenience and necessity require such construction.

Thus, as it has constructed a new sewage treatment facility without first obtaining a certificate of public convenience and necessity from the Commission, Willabrook appears to be in violation of KRS 278.020(1).

Furthermore, KRS 278.280 authorizes the Commission to prescribe rules for the performance of any service furnished or supplied by a utility under its jurisdiction. Pursuant to this authority, the Commission has promulgated Commission Regulation 807 KAR 5:001, which establishes general rules of procedure to be followed by utilities under its jurisdiction. More specifically, 807 KAR 5:001, Section 9(2), contains the procedure a utility must follow in order to obtain a certificate of public convenience and necessity from the Commission prior to beginning construction of a new facility. As Willabrook failed to adhere to the requirements of 807 KAR 5:001, Section 9(2), prior to beginning construction of its new facility, it appears to be in violation of that regulation as well.

Based on the information available to the Commission, it finds that a prima facie showing has been made that Willabrook is in violation of KRS 278.020(1) and 807 KAR 5:001, Section 9(2).

The Commission, on its own motion, HEREBY ORDERS that:

1. Willabrook shall appear before the Commission on April 9, 1997, at 9:00 a.m., Eastern Standard Time, in Hearing Room 2 of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violations of KRS 278.020(1) and 807 KAR 5:001, Section 9(2), and of showing cause why it should not be subject to the penalties prescribed in KRS 278.990(1) for these alleged violations.

2. Willabrook shall submit to the Commission, within 20 days of the date of this Order, a written response to the allegations contained herein.

3. Any motion requesting an informal conference with Commission Staff to consider the simplification of issues or any other matters which may aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

Done at Frankfort, Kentucky, this 5th day of March, 1997.

PUBLIC SERVICE COMMISSION

Linda K. Breckhoff
Chairman

E. J. Helton
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director